

No. 19-262

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In The  
**Supreme Court of the United States**

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Xiao-Ying Yu,

*Petitioner,*

v.

Maryland Department of Health, Secretary Robert Neall  
and Maryland Department of Budget and  
Management, Secretary David Brinkley

*Respondents.*

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Fourth Circuit

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**SUPPLEMENTAL BRIEF OF PETITIONER**

-----◆-----

September 18, 2019

Xiao-Ying Yu  
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*Pro Se. Petitioner*

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## STATUTES INVOLVED

### STATUES PROVISIONS AND REGULATIONS:

#### Fourteenth Amendment-U.S. CONST.:

##### Section 1.

“...All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

#### 29 U.S.C. § 621, e. seq: Prohibition of age discrimination (“ADEA”)

##### § 623 (a).Employer practice:

(1) to fail or to refuse to hire or to discharge any individual or otherwise discriminate against individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(d). Opposition to unlawful practice; participate in investigations, proceedings, or litigation. It shall be unlawful for an employer...discriminate against any individual.., because such individual has opposed any practice made unlawful by this section, ...or because such individual ...made a charge,...”

42 U.S.C. Chapter 126-Equal opportunity for individual with disability § 12101 et seq., (“ADA”):

42 U.S.C. Chapter 126, Subchapter I,  
Employment

§ 12112 Discrimination:

“(a) No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedure, the hiring, advancement, or discharge of employees, employee

compensation, job training, and other terms, conditions, and privileges of employment.”

**§ 12117 Enforcement**

**“(a) Power, remedies, and procedures**

The power, remedies, and procedures set forth in sections ....provides to ... or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.”

**42 U.S.C. Chapter 126, Subchapter IV-  
Miscellaneous Provisions**

**§12202. State Immunity**

“A State shall not be immune under the eleventh amendment to the constitution of the United State from an action in Federal or State court of competent jurisdiction for a violation of this chapter , remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a state.”

§12203. Prohibition against retaliation and coercion

“(a) Retaliation:

No person shall discriminate against any individual because such individual has opposed an act or practice made unlawful by this chapter or because such individual made a charge, testified, or participate in any manner in an investigation, proceeding, or hearing under this chapter.”

(c) Remedies and procedures: The remedies and procedures available under section 12117, 12133 and 12188 of this title shall be available to aggrieved persons for violation of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III of this chapter, respectively.”

42 U.S.C. §§ 2000e et seq. Title VII of the civil rights Act of 1964 law: (“Title VII”):

§2000e-2. Unlawful employment practices

“(a) Employer practice: It shall be an unlawful employment practice for an employer:

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against individual with respect to his compensation, terms, conditions, or privileges of employment, because of such

individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employment or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

...

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practice:

Except as otherwise proved in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."

§2000e-3. Other unlawful employment practices

"(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings:

"It shall be an unlawful employment practice for an employer to discriminate against any

of his employees or applicants for employment... because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter."

Federal Rule Appellate Procedure Rule 16.

The Record on Review Or Enforcement.

"(a) COMPOSITION OF THE RECORD. The record on review or enforcement of an agency order consists of:

- (1) the order involved;
- (2) any findings or report on which it is based; and
- (3) the pleadings, evidence, and other parts of the proceedings before the agency.

(b) OMISSIONS FROM OR MISSTATEMENTS IN THE RECORD. The parties may at any time, by stipulation, supply any omission from the record or correct a misstatement, or the court may so direct. If necessary, the court may direct that a supplemental record be prepared and filed.

**NOTES**

(As amended Apr. 24, 1998, eff. Dec. 1, 1998.)

Federal Rule Appellate Procedure Rule 18.

Stay Pending Review

(a) MOTION FOR A STAY.

(1) *Initial Motion Before the Agency.* A petitioner must ordinarily move first before the agency for a stay pending review of its decision or order.

(2) *Motion in the Court of Appeals.* A motion for a stay may be made to the court of appeals or one of its judges.

(A) The motion must:

(i) show that moving first before the agency would be impracticable; or

(ii) state that, a motion having been made, the agency denied the motion or failed to afford the relief requested and state any reasons given by the agency for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements supporting facts subject to dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) The motion must be filed with the circuit clerk and normally will be considered by a panel of the court. But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge.

(b) BOND. The court may condition relief on the filing of a bond or other appropriate security.

Federal Rule Appellate Procedure Rule 41,  
Mandate: Contents: Issuance and Effective  
Date; Stay.

“(b) When Issued. The court’s mandate must issue 7 days after the time to file a petition for rehearing expire, or 7 days after entry of an order denying a timely petition for penal rehearing, petitioner for rehearing en banc, or motion for stay of mandate, whichever is late.”

(d) STAYING THE MANDATE PENDING A PETITION FOR CERTIORARI.

(2) Duration of Stay; Extensions. The stay must not exceed 90 days, unless:

(A) the period is extended for good cause; or

(B) the party who obtained the stay notifies the circuit clerk in writing within the period of the stay:

- (i) that the time for filing a petition has been extended, in which case the stay continues for the extended period; or
- (ii) that the petition has been filed, in which case the stay continues until the Supreme Court's final disposition.



**SUPPLEMENTAL BRIEF OF PETITIONER**

This supplemental brief calls the Honorable Court's attention to a intervening matter, not readily available at the time when Petitioner filed her Petition for Writ of Certiorari and 30 of related appendix on August 23, 2019, that may affect the Court's consideration of this case.

**I. U.S. Court of Appeals for Fourth Circuit's Order Is Pending**

After filing her Petition for Writ of Certiorari in the Honorable Court on August 23, 2019, Ms. Yu filed her motion on August 26, 2019 pursuant to Federal Rule of Appellate Procedure ("FRAP") 16, 41(b) and 18(a)(2) and requested Fourth Circuit's consideration to correct the misstatement in the docket record which does not contain her "Notice of Appeal" between August 6, 2018 (when her case No. 18-1889 was established) and October 17, 2018, and to remain the pending status of their orders denying her motion to recall the mandate and public their pre-decided unpublished opinion without prior decision for her timely filed motion to stay along with her petition for rehearing and rehearing en banc (see the Petitioner's motion, related Appendix#1). Since then, Fourth Circuit's order is pending and the stay of the mandate remains in effect until this Court reaches a decision based on FRAP 41(d)(2) (see Current Fourth Circuit's docket record, Appendix#2).

## **II. There Are Other Respondents' Counsels.**

Petitioner just received a letter (dated 8/28/2019) from her case analyst, Mr. Jack Levitan, regarding receipt and docket of her petition, a letter in her behalf to send Respondent a form of "waiver" to not file a response to petition for a writ of certiorari, and a form of "Waiver" when she came back Baltimore on September 16, 2019 from oversee trip because her mother was sick. Also, she received a hard copy form of "Waiver" completed by Mr. James N. Lewis, Maryland Office of the Attorney General, Respondent, Maryland Department of Health's counsel, (see related Appendix#3, Post-Office stamp is August 31, 2019) indicating that he is not a member of bar in this Court and will not file a response to the Petition. Yet, his "Waiver" has not been shown in this Court docket in the Case No.19-262. Nor has her case analyst Mr. Lavitan been aware of Mr. Lewis' Waiver based on Petitioner's conversation with Mr. Lavitan over the phone in the morning on September 17, 2019.

Besides, Mr. Nicholas E. Johansson, Esq., (Maryland Office of the Attorney General, Respondent, Maryland Department of Health, Principle Counsel), attended EEOC (4/19/2017) Fact-finding conference and heard that Ms. Sara Barra provided EEOC false information regarding MDH HR's (10/10/2014) retaliatory constructive discharge which Ms. Barra herself motived leading to unlawful termination on November 3, 2014 without mitigation

as that on October 10, 2014, Petitioner asked to resign and retire to intentionally interfere with EEOC's investigation of Petitioner's discrimination and retaliation charge under Title VII, ADA and ADEA leading to EEOC's biased conclusion. Please see Appendix#4, (non-uploading Petition related Appendix#23a-d and 27b). Mr. Johansson may be able to respond the Petition.

In addition, because the Respondents are not only Maryland Department of Health, Secretary Neall, but also include Maryland Department of Budget and Management, Secretary Brinkley, Petitioner would add the Assistant Attorney General at Maryland Department of Budget and Management, Mr. Clifton R. Gray as well as the Maryland State Attorney General, Mr. Brian E. Frosh, (who were listed as Respondents in her previous certificate of service) and provide copies of her Petition Volume I and II to them. However, Petitioner's right foot bones were recently broken that makes great difficulties for her to provide additional hard copies of Petition for them to review (see related Appendix#5). In order to allow Respondents' counsels to review her Petition and supporting Appendix through the "Docket search" in this honorable Court's website, Petitioner respectfully requests this Court's consideration to complete the uploading of her Appendix because there is only 1.5 of Petitioner's 30 supporting Appendix in the docket "Appendix" for case No. 19-

19-262 containing biased information without Petitioner's complaint, response to Respondents' motion to dismiss, informal brief and petition for rehearing and rehearing en banc as well as summary of lower courts' critical docket records and proceedings. The current-uploaded Appendix includes only Appendix#1a&b containing the Court of Appeals for Fourth Circuit's (1/24/2019) curiam opinion and judgment; Appendix#2a containing the U.S. District Court of Maryland's (6/26/2018) memorandum and order, and the part of the title for Appendix 2b, Petitioner's (10/10/2018) "Informal Brief" which is appealing against the U.S. District Court of Maryland's memorandum and order. But, the docketed-Appendix indicated "Additional material from this filing is available in the clerk's office" and the rest of Petitioner's supporting Appendix has not been uploaded. It appears not to be consistent with the way of uploading Appendix that this Court Clerk's Office did for previous Petitioners.

### **III. DISCUSSION**

The U.S. Supreme Court looks for cases "involving unsettled questions of federal constitutional or statutory law of general interest." (*Rehnquist*, "The Supreme Court: How It Was, How It Is." 269, 1987). These cases meet three conditions: (1) cases raising a federal questions to which different federal circuits have given conflicting answers, (2) cases clearly raising an important

federal question, and (3) cases which an appellate court decided in conflict with governing Supreme Court precedent (Supreme Court Rule 10).

The Fourth Circuit order's pending status makes it convenient for this Court's review of this case.

Petitioner presents convincing evidence in her pleadings that she exhausted administrative remedy, her priority and equal protection rights were deprived without mitigation and a hearing, and she raises important federal questions that the lower courts have held that an act of Congress is unconstitutional based on two clauses of Fourteenth Amendment to U.S. CONST. In addition, she indicates that the judgment and orders made by the Fourth Circuit to affirm the District Court's dismissal directly conflict with the decisions of over four of other U.S. Courts of Appeals and also this Court's principles and instructions for workplace discrimination and retaliation against employee's protected activities under Title VII, ADA and ADEA. Furthermore, she demonstrates the issues such as the U.S. appellate court's refusal of granting intervene, oral argument and rehearing en banc to reject amendment of new evidence and arguments of genuine factual and legal issues that are sufficiently important in terms of their national wide relevance or important that the Supreme Court should have the final word and supervision on the issues.

Nevertheless, as a practical matter, the justice will not grant certiorari without requesting a response from the party opposing certiorari. Therefore, as Mr. Lewis is not a member of bar in this Court to not be able to file a response, it is important to bring this Court's attention to another Maryland Department of Health's Counsel, Mr. Johansson; add back Respondents' counsels who were previously listed in Petitioner's complaint, and also it is very necessary to make it convenient for them to review the entitle picture of the Petition and Appendix through access to "docket search" in this Court's website rather than creating difficulties for them to go to Supreme Court Clerk Office to request a review of the major critical part of important Appendix.

Furthermore, the uploading all of Appendix instead of only biased information will not only to allow Respondents' counsels but also the clerks from Justice of Alito's chamber and "Certiorari Pool" of the other eight Justice to have opportunities to review a entire picture of the Petition and Appendix which include proceedings (table of docket record summary, Appendix#30), and Petitioner's complaints and consequential documents in response to the Respondents' motion to dismiss, and judgments and orders of both the District Court and Fourth Circuit through access to "docket search" in this Court's website without difficulties at their convenience as needed to save their time.

Moreover, providing complete Petition and related supporting Appendix in this Court's website is very important for the Respondents to make opposing brief, and for Justice of Alito's law Clerk to generate opinion of review and "Cert Pool" law Clerk to create memos prior to being collected by the Chief Justice and distributed to other justice to review and annotate. It is also a significant indicator as the outstanding model of the judicial system for State and Federal Courts as well as American citizens to learn whether to public or hide the evidence (which are important issues existed in the lower courts) especially when United States citizen's property and equal protection rights were unlawfully deprived to retaliate against their protected activities under Title VII, ADA and ADEA without mitigation and a hearing by government agency and United States District Court and Appellate Circuit Court.

### CONCLUSION

Petitioner prays to GOD and respectfully requests this Court's attention to her Supplemental Brief because biased information may affect the Court's consideration of cases.

Very Respectfully submitted.

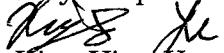
  
Xiao-Ying Yu, *Pro Se.*  
P.O. Box 293  
Abingdon, MD 21009

Exhibit No.1.

The Fourth Circuit (“CA4”) remains the status of recalling the mandate by pending Petitioner’s (8/26/2019) motion to correct the errors in CA4’s docket and to remains pending status of the mandate (as she requested to recall the mandate and to public the unpublished opinion) in response to CA4’s denial orders on July 29, and August 13, 2019.

Exhibit No.1a  
Petitioner’s (8/26/2019) motion

IN THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

Xiao-Ying Yu	*
<i>Plaintiff-Appellant</i>	* Case No. 18-1889
V.	*
Maryland Department of	*
Health, Secretary Robert	*
Neall and Maryland	*
Department of Budget and	*
Management Secretary	*
David Brinkley	*
<i>Defendants-Appellees</i>	*

\*\*\*\*\*

MOTION FOR THE CORRECTION OF THE MISSTATEMENT AND A STAY PENDING THE REVIEW OF PLAINTIFF'S APPLICATION FOR STAY AND INJUNCTIVE RELIEF AND PETITION FOR CERTIORARI BY THE SUPREME COURT OF THE UNITED STATES

Plaintiff-Appellant, Xiao-Ying Yu, *Pro Se.*, respectfully makes requests pursuant to Fed. App. P. Rule 16, 41(b) and 18(a)(2) for the honorable Court's consideration to correct the inconsistent and incorrect statement of "Date NOA filed" and "Date Rec'd COA" under "Originating Court Information" in the "General Docket" of docket record for Case NO. 18-1889 regarding the filing dates of Petitioner's notice of appeal as August 2, and August 6, 2018, and also to grant a stay pending the review of the Plaintiff's application for stay and injunctive relief as well as her petition for writ of certiorari by the Supreme Court of the United States<sup>1</sup>. In support of this application, the Plaintiff states the following:

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<sup>1</sup> Plaintiff, Asian American *pro se*, was Maryland State employee supported by CDC funding and was unlawfully terminated in the absence of pre-mitigation within two months after she filed discrimination and retaliation complaints with EEOC under Title VII, ADEA and ADA. The evidence of Plaintiff's written reports regarding EEOC's permission to sue and EEOC's right-to-sue letter were docketed (11/6/2017 and 3/22/2018 in the district court prior to the dismissal of her claims, COA4 docket#4). Defendants failure to provide a evidentiary prior-mitigation of termination

1. There is no any documents of Plaintiff's notice of appeal transmitted from the District Court to the Courts of Appeals for the Fourth Circuit (see enclosed exhibit: the District Court docket record ECF#48&52) in the Court's docket records between August 2 and August 20, 2018 (CA4-docket#1-4). Therefore, it lacks filing documents to support the statement made in the docket records for "Date NOA filed" and "Date Rec'd COA" under "Originating Court Information" in "General Docket" between August 6, 2018 and August 8, 2018. In addition, Plaintiff never filed notice of appeal on August 2, and August 6, 2018. In fact, Plaintiff filed her initial notice of appeal on July 26, 2018 with exhibits: motion for clarification and relief, motion for leave to file amendment;

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and any legitimate and un-discriminatory, un-retaliatory and non-pretextual reasons for denial of their adverse actions and neglecting their duties; and Congress' abrogation of State employers' 11<sup>th</sup> Amendment Immunity to ADA complaint were biasedly neglected. Due Process and Equal Protection Clauses of Fourteenth Amendment to U.S.CONST protects Employees' property from deprivation without mitigation or a hearing (Goldberg v. Kelly, 397 U.S. 254). However, Plaintiff has never been given a hearing and pre-direction of the District Court's decision by adopting the reasons from defendants' motion based on the genuine material disputes and outside pleadings prior to the District Court's closure of her case. Plaintiff's right to dispute the factual and legal issues regarding deprivation of her property right at oral argument and rehearing en banc in this Court were prejudicially denied.

EOC's new evidence and re-submission of EEOC's right-to-sue letter" (which were not docketed on 7/24/2018, instead was returned to her on 7/27/2018 due to the immediate closure of her case, see exhibit, ECF#37, 38&39), but her 7/26/2019 notice of appeal was also returned to her on July 31, 2018 (ECF#40) because the District Court ignored Plaintiff's (7/17/2018) notice of appearance and her attorneys' substitution of attorneys and discharge of attorneys (7/23/2018, ECF35&36)). Plaintiff had to re-submit her notice of appeal on August 7, 2018 as the District Court's instruction and enclosed same exhibits described above and plus her (7/26/2019) initial notice of appeal. It is no merit to enter Plaintiff's (8/7/2018) notice of appeal and related exhibits to the docket of this Court on October 18, 2018 (CA4-docket#15). Nor is there any additional transmitted supplemental information (stated in the text of this docket#15) from the District Court except this notice of appeal, which, while was transmitted by the District Court to the Court of Appeals on August 7, 2018 (indicated by the District Court docket record-ECF#54, see the enclosed exhibit).

2.Regarding her request of relief from the District Court's biased actions and mistakes in the docket records, Plaintiff addressed in her letter on 8/30/2018 (CA4-doc#7), motion for concerns about the docket records on October 18, 2018 (CA4-doc#17) and her supplemental informal brief on January 16, 2019 (CA4-doc#25) as well as her

informal brief and petition for rehearing and rehearing en banc (CA4-doc#10&29). Yet, her motion for concerns about the docket records was mooted and her informal brief and her petitioner for rehearing and rehearing were denied by Court's (1/24/2019) curiam opinion and judgment, and (3/26/2019) order, (CA4-doc#26, 27&37).

3. The honorable Court's mandate and order should be remained to stay pending consistently as same as the status between May 6, 2019 and July 29, 2019 during the Supreme Court's review of Plaintiff's application for stay and injunctive relief by the Chief Justice Robert, Jr. because the mandate based on Fed. R. App. P. 41(a) lacks merit by failure to follow the instruction Fed. R. App. P. 41(b) and ignoring Plaintiff's motion to stay that was amended to her initial filling along with her petition for initial hearing/rehearing and rehearing en banc. Keeping the misstatements and incorrect docket records and denial of pending will cause the confusion and bring the difficulties to interfere with the Supreme Court's review of Plaintiff's application for stay and injunctive relief as well as her petition for writ of certiorari.

4. There is no prejudice to respondents if the Court grants Plaintiff's motion to consider the correction of the errors in the docket records and grant a stay pending review for the integrity of justice under Due Process and Equal Protection two clauses of Fourteenth Amendment U.S.CONST. and 42 U.S.C. § 1983.

WHEREFORE, the Plaintiff prays to GOD that this motion be granted.

Respectfully submitted,

/s/ Xiao-Ying Yu, *pro se*

Mailing address:

P.O. Box 293,

Abingdon, MD 21009

August 26, 2019

Exhibit No. 1b.

*CA4's (8/13/2019) order denying Petitioner's (8/12/2019) motion to suspend CA4's (7/29/2019) order requesting to remain the stay status of the mandate and to public the unpublished opinion:*

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 18-1889

(1:17-CV-03260-JKB)

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XIAO-YING YU

Plaintiff-Appellant

V.

ROBERT R. NEALL, Maryland Department of

Health Secretary (formally Dennis Schrader);  
DAVID BRINKLEY, Maryland Department of  
Budget and Management Secretary

Defendants-Appellees

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**ORDER**

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(Filed August 13, 2019)

The court denies the motion to suspend the  
court order of July 29, 2019 in this case.

/s/ Patricia S. Connor, Clerk

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**Exhibit No.2**

CA4 docket records:

**General Docket**  
**United States Court of Appeals for the Fourth Circuit**

<b>Court of Appeals Docket #:</b> 18-1889	<b>Docketed:</b> 08/06/2018		
<b>Nature of Suit:</b> 3440 Other Civil Rights	<b>Termed:</b> 01/24/2019		
<b>Xiao-Ying Yu v. Robert Neall</b>			
<b>Appeal From:</b> United States District Court for the District of Maryland at Baltimore			
<b>Fee Status:</b> fee paid			
<b>Case Type Information:</b>			
1) Civil Private			
2) private			
3) null			
<b>Originating Court Information:</b>			
<b>District:</b> 0416-1 : 1:17-cv-03260-JKB			
<b>Presiding Judge:</b> James K. Bredar, Chief U. S. District Court Judge			
<b>Date Filed:</b> 11/06/2017			
<b>Date Order/Judgment:</b> 06/26/2018	<b>Date Order/Judgment EOD:</b> 06/26/2018	<b>Date NOA Filed:</b> 08/02/2018	<b>Date Rec'd COA:</b> 08/02/2018
<b>Date NOA Filed:</b> 08/07/2018	<b>Date Rec'd COA:</b> 08/07/2018		
<b>Prior Cases:</b>			
None			
<b>Current Cases:</b>			
None			

<b>XIAO-YING YU</b> Plaintiff - Appellant	<b>Xiao-Ying Yu</b> Direct: 410-671-9823 Email: xiaoying.yu67@gmail.com [NTC Pro Se] 557 Kirkcaldy Way Abingdon, MD 21009
<b>v.</b>	
<b>ROBERT R. NEALL</b> , Maryland Department of Health Secretary (formerly Dennis Schrader) Defendant - Appellee	<b>James Nelson Lewis, Esq.</b> Direct: 410-767-5162 Email: James.Lewis1@maryland.gov [COR NTC Government] OFFICE OF THE ATTORNEY GENERAL Maryland Department of Planning Suite 302 300 West Preston Street Baltimore, MD 21201
<b>DAVID BRINKLEY</b> , Maryland Department of Budget and Management Secretary Defendant - Appellee	<b>James Nelson Lewis, Esq.</b> Direct: 410-767-5162 [COR NTC Government] (see above)

08/06/2018	<u>1</u> 1 pg, 12.96 KB	Case docketed. Originating case number: 1:17-cv-03260-JKB. Case manager: CBennett. [18-1889] CB [Entered: 08/06/2018 11:17 AM]
08/06/2018	<u>2</u> 1 pg, 10.65 KB	RECORD requested from Clerk of Court. Due: 08/20/2018. [18-1889] CB [Entered: 08/06/2018 11:42 AM]
08/06/2018	<u>3</u> 11 pg, 52.45 KB	INFORMAL BRIEFING ORDER filed. Mailed to: Xiao-Ying Yu. Informal Opening Brief due 08/30/2018. Informal response brief, if any: 14 days after informal opening brief filed. [18-1889] CB [Entered: 08/06/2018 11:46 AM]
08/08/2018	<u>4</u>	ASSEMBLED ELECTRONIC RECORD docketed (522 Pages). Originating case number: 1:17-cv-03260-JKB. Record in folder? Yes. Record reviewed? Yes. PSR included? N/A. [18-1889]--[Edited 01/11/2019 by TW, added page numbers to docket text] TW [Entered: 08/08/2018 12:08 PM]
08/24/2018	<u>5</u> 2 pg, 330.9 KB	MOTION by Appellant Xiao-Ying Yu to extend filing time for informal opening brief for 30 days. Date and method of service: 08/24/2018 hand delivery. [1000354981] [18-1889] CB [Entered: 08/24/2018 01:47 PM]
08/24/2018	<u>6</u> 1 pg, 8.28 KB	ORDER filed [1000354983] granting Motion to extend filing time [5] Number of days granted: 30. Informal Opening Brief due 10/01/2018. Copies to all parties. Mailed to: Xiao-Ying Yu. [18-1889] CB [Entered: 08/24/2018 01:49 PM]
09/04/2018	<u>7</u> 5 pg, 988.41 KB	Letter re: district court docket by Appellant Xiao-Ying Yu. [1000361235] [18-1889] CB [Entered: 09/05/2018 11:07 AM]
09/13/2018	<u>8</u> 1 pg, 19.1 KB	Notice issued: response to [7] letter from Xiao-Ying Yu. Mailed to: Xiao-Ying Yu. [18-1889] CB [Entered: 09/13/2018 03:48 PM]
10/01/2018	<u>9</u> 2 pg, 448.69 KB	DISCLOSURE OF CORPORATE AFFILIATIONS by Xiao-Ying Yu. Was any question on Disclosure Form answered yes? No. [1000376479] [18-1889] TW [Entered: 10/01/2018 12:34 PM]
10/01/2018	<u>10</u> 56 pg, 3.5 MB	INFORMAL OPENING BRIEF by Xiao-Ying Yu. [18-1889] TW [Entered: 10/01/2018 12:35 PM]
10/11/2018	<u>11</u> 1 pg, 36.1 KB	APPEARANCE OF COUNSEL by James N. Lewis for David Brinkley and Robert R. Neall. [1000383121] [18-1889] James Lewis [Entered: 10/11/2018 02:34 PM]
10/11/2018	<u>12</u> 3 pg, 30.63 KB	MOTION by Robert R. Neall and David Brinkley to extend filing time for informal response brief until October 22, 2018.. Date and method of service: 10/11/2018 US mail. [1000383125] [18-1889] James Lewis [Entered: 10/11/2018 02:37 PM]
10/11/2018	<u>13</u> 1 pg, 8.89 KB	ORDER filed [1000383154] granting Motion to extend filing time [12] Number of days granted: 7., extending informal briefing order deadlines. Any Informal Response Brief due 10/22/2018. Copies to all parties. Mailed to: Xiao-Ying Yu. [18-1889] JH [Entered: 10/11/2018 03:15 PM]
10/15/2018	<u>14</u> 6 pg, 1.08 MB	RESPONSE/ANSWER (titled "Reply to Appellees' Motion to Extend Time") by Xiao-Ying Yu to Motion to extend filing time [12]. [18-1889] CB [Entered: 10/16/2018 05:01 PM]
10/18/2018	<u>15</u>	SUPPLEMENTAL ASSEMBLED ELECTRONIC RECORD docketed (64 pages). Record in folder? Yes. Record reviewed? Yes. [18-1889]--[Edited 01/11/2019 by TW, added page numbers to docket text] CB [Entered: 10/18/2018 10:28 AM]
10/22/2018	<u>16</u> 22 pg, 62.45 KB	INFORMAL RESPONSE BRIEF by David Brinkley and Robert R. Neall. [18-1889] James Lewis [Entered: 10/22/2018 02:12 PM]
10/22/2018	<u>17</u> 51 pg, 10.1 MB	MOTION by Xiao-Ying Yu titled "Motion for concerns of the docket records". Date and method of service: 10/18/2018 US mail. [1000390084] [18-1889] CB [Entered: 10/23/2018 03:20 PM]
10/25/2018	<u>18</u> 4 pg, 679.78 KB	MOTION by Xiao-Ying Yu for leave to file electronically. Date and method of service: 10/23/2018 US mail. [1000392268] [18-1889] CB [Entered: 10/26/2018 09:57 AM]
10/26/2018	<u>19</u> 1 pg, 8.54 KB	ORDER filed [1000392343] granting Motion for leave to file documents electronically. [18] Copies to all parties. [18-1889] JQ [Entered: 10/26/2018 10:39 AM]
11/01/2018	<u>20</u> 1 pg, 8.28 KB	ORDER filed [1000396255] extending filing time for informal reply brief until 11/13/18. Number of days granted: 12. Copies to all parties. [18-1889] TW [Entered: 11/01/2018 01:50 PM]
11/13/2018	<u>21</u> 3 pg, 510.74 KB	Letter re: case by Xiao-Ying Yu. [1000402853] [18-1889] TW [Entered: 11/13/2018 02:01 PM]
11/13/2018	<u>22</u> 42 pg, 3.11 MB	INFORMAL REPLY BRIEF by Xiao-Ying Yu. [18-1889] TW [Entered: 11/13/2018 02:02 PM]
11/14/2018	<u>23</u> 3 pg, 2.74 MB	Amended DISCLOSURE OF CORPORATE AFFILIATIONS by Xiao-Ying Yu. Was any question on Disclosure Form answered yes? No [1000403425] [18-1889] Xiao-Ying Yu [Entered: 11/14/2018 10:44 AM]
01/16/2019	<u>24</u> 41 pg, 39.73 MB	SUPPLEMENTAL INFORMAL OPENING BRIEF by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 01/16/2019 12:23 PM]
01/24/2019	<u>25</u> 2 pg, 11 KB	UNPUBLISHED PER CURIAM OPINION filed. Motion disposition in opinion--denying as moot the motion for concerns of the docket records [17]. Originating case number: 1:17-cv-03260-JKB. Copies to all parties and the district court/agency. [1000444298]. Mailed to: Xiao-Ying Yu. [18-1889] CB [Entered: 01/24/2019 10:32 AM]

01/24/2019	<input type="checkbox"/> <u>27</u> 4 pg, 37.68 KB	JUDGMENT ORDER filed. Decision: Affirmed. Originating case number: 1:17-cv-03260-JKB. Entered on Docket Date: 01/24/2019. [1000444300] Copies to all parties and the district court/agency. Mailed to: Xiao-Ying Yu. [18-1889] CB [Entered: 01/24/2019 10:34 AM]
02/06/2019	<input type="checkbox"/> <u>28</u> 65 pg, 10.43 MB	Amended PETITION for initial hearing en banc by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 02/06/2019 09:50 PM]
02/06/2019	<input type="checkbox"/> <u>29</u> 65 pg, 42.68 MB	Supplemental PETITION for rehearing and rehearing en banc by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 02/06/2019 09:53 PM]
02/07/2019	<input type="checkbox"/> <u>30</u> 3 pg, 412.8 KB	Supplemental PETITION for initial hearing en banc by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 02/07/2019 12:22 AM]
02/07/2019	<input type="checkbox"/> <u>31</u> 3 pg, 412.8 KB	Supplemental PETITION for rehearing and rehearing en banc by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 02/07/2019 12:26 AM]
02/07/2019	<input type="checkbox"/> <u>32</u> 1 pg, 8.48 KB	Mandate stayed pending ruling on petition for rehearing or rehearing en banc. [18-1889] CB [Entered: 02/07/2019 10:19 AM]
02/08/2019	<input type="checkbox"/> <u>33</u> 82 pg, 25.65 MB	MOTION by Xiao-Ying Yu for leave to file , for initial hearing en banc , to reconsider unpublished per curiam Opinion [26], bcc:none [26]. Date and method of service: 02/08/2019 ecf. [1000454765] [18-1889] Xiao-Ying Yu [Entered: 02/08/2019 03:20 PM]
02/08/2019	<input type="checkbox"/> <u>34</u> 1 pg, 852.01 KB	CHANGE OF ADDRESS Notice by Xiao-Ying YuMailing address. [1000454917] [18-1889]--[Edited 02/11/2019 by ALC - Filing Event modified] Xiao-Ying Yu [Entered: 02/08/2019 05:23 PM]
02/13/2019	<input type="checkbox"/> <u>35</u> 34 pg, 2.61 MB	Amended petition/motion by Xiao-Ying Yu amending [30] Motion. Document: Amendment-mandate-2-13-2019.pdf. [1000457512] [18-1889] Xiao-Ying Yu [Entered: 02/13/2019 04:50 PM]
02/13/2019	<input type="checkbox"/> <u>36</u> 34 pg, 2.61 MB	Amended petition/motion by Xiao-Ying Yu amending [31] Motion for rehearing and rehearing en banc. Document: Amendment-mandate-2-13-2019.pdf. [1000457516] [18-1889] Xiao-Ying Yu [Entered: 02/13/2019 04:56 PM]
03/26/2019	<input type="checkbox"/> <u>37</u> 1 pg, 8.19 KB	COURT ORDER filed [1000481776] denying Motion for initial hearing en banc [28], denying Motion for initial hearing en banc [30], denying Motion for initial hearing en banc [33]; denying Motion for rehearing and rehearing en banc [29], denying Motion for rehearing and rehearing en banc [31]; denying Motion to reconsider [33]; denying Motion for leave to file [33]. Copies to all parties. [18-1889] CB [Entered: 03/26/2019 09:39 AM]
04/01/2019	<input type="checkbox"/> <u>38</u> 58 pg, 4.86 MB	Emergency MOTION by Xiao-Ying Yu to suspend I respectfully make the application for suspension of the Court's 3/26/2019 order under Fed. App. P Rule 2 for relief of the consequence of default by manifest injustice demonstrated by my petition and motion to recuse because the order was biased.. , to disqualify/recuse judge Names of Judge(s) to be disqualified/recused: I respectfully file the motion to move that panel-leading judge recuse herself because her practical history, leading biased curiam and request of unreasonable a poll as barrier to block petition &deprive my civil right, property right and relief benefits. , vacate decision on appeal , to reverse decision on appeal. Date and method of service: 04/01/2019 ecf. [1000485290] [18-1889] Xiao-Ying Yu [Entered: 04/01/2019 11:37 AM]
04/12/2019	<input type="checkbox"/> <u>39</u> 1 pg, 14.37 KB	NOTICE ISSUED re: further consideration unavailable - Local Rule 40(d). Document: [38] Motion to reverse decision on appeal [38], Motion vacate decision on appeal [38], Motion to disqualify/recuse judge [38], Motion to suspend. [18-1889] CB [Entered: 04/12/2019 02:02 PM]
04/15/2019	<input type="checkbox"/> <u>40</u> 1 pg, 8.36 KB	Mandate issued. Referencing: [26] unpublished per curiam opinion, [27] judgment order. Originating case number: 1:17-cv-03260-JKB. [18-1889] TW [Entered: 04/15/2019 04:24 PM]
04/16/2019	<input type="checkbox"/> <u>41</u> 62 pg, 5.64 MB	REPLY by Xiao-Ying Yu to Notice [39]. Enter name and role of filer if not on list of party filers above: I am respectfully submitting my civil action under 42 U.S.Code 1983, 14th Amendment and Congress enforcement power and requesting the Court to execute equal justice under law because of the deprivation of my property and equal protection rights see doc#39. [18-1889] Xiao-Ying Yu [Entered: 04/16/2019 05:30 PM]
04/16/2019	<input type="checkbox"/> <u>42</u> 3 pg, 150.39 KB	AFFIDAVIT by Appellant Xiao-Ying Yu re: I stated all these matters under oath, the letter to the Court's Clerk and Chief Judge, the civil action and related appendix are true and correct (linked to docket#41). Certificate of service and compliance are also enclosed.. [1000495146] [18-1889] Xiao-Ying Yu [Entered: 04/16/2019 08:59 PM]
04/19/2019	<input type="checkbox"/> <u>43</u> 84 pg, 7.16 MB	Emergency MOTION by Xiao-Ying Yu I respectfully request the Court to recall the mandate and vacate its judgment under Fed. R. App. P. 41(b)&(c), due process and equal protection of the Fourteenth Amendment and Congress's enforcement power for the deprivation of my constitutional rights to recall mandate. , vacate decision on appeal. Date and method of service: 04/19/2019 ecf. [1000496732] [18-1889] Xiao-Ying Yu [Entered: 04/19/2019 06:40 AM]
04/22/2019	<input type="checkbox"/> <u>44</u> 1 pg, 8.22 KB	ORDER filed [1000498011] denying Motion to recall mandate [43]; denying Motion vacate decision on appeal [43]. Copies to all parties. [18-1889] CB [Entered: 04/22/2019 04:33 PM]
05/06/2019	<input type="checkbox"/> <u>45</u> 96 pg, 7.56 MB	MOTION by Xiao-Ying Yu I am respectfully submitting a motion for publication of unpublished opinions and reconsideration of the Court's 4/22/2019 order under Fed. R. App. P. 34(a)(2)&(b), Rule 27,Local Rule 36(b), U.S.C. 28, Chap.21, 485, Fed. R. App. P. 41(b), 42USC, 1983. to publish opinion/order. , to reconsider order [44], Motion [43], Motion [40], court order [37], Judgment order [27], Notice [39] , to recall mandate.. Date and method of service: 05/06/2019 ecf. [1000506820] [18-1889] Xiao-Ying

		Yu [Entered: 05/06/2019 11:42 AM]
05/29/2019	<input checked="" type="checkbox"/> <u>46</u> 2 pg, 132.34 KB	Letter re: The letter to clerk and chief judge is to follow up my motion for reconsideration & publication. I am hoping to obtain relief and learn if the deadline to file petition for writ of certiorari should be postponed due to the process of recalling the mandate [45] Motion, [45] Motion, [45] Motion, [44] order, [43] Motion, [43] Motion, [40] mandate by Xiao-Ying Yu. [1000520947] [18-1889] Xiao-Ying Yu [Entered: 05/29/2019 03:34 PM]
06/10/2019	<input checked="" type="checkbox"/> <u>47</u> 90 pg, 4.22 MB	DOCUMENT re: copy of motion to US Supreme Court AND request for copy of unpublished opinion by Xiao-Ying Yu. [1000529556] [18-1889] CB [Entered: 06/13/2019 09:19 AM]
06/10/2019	<input checked="" type="checkbox"/> <u>48</u> 2 pg, 167.79 KB	SUPREME COURT REMARK--extension granted to file petition for writ of certiorari. Petition for certiorari now due: August 23, 2019. [18-1889] EB [Entered: 06/13/2019 03:30 PM]
06/14/2019	<input checked="" type="checkbox"/> <u>49</u> 6 pg, 1.18 MB	Letter re: Plaintiff, pro se, is respectfully requesting the clarification for the error in the abstract of CA4 doc#47 and also control and prohibition of the alteration and deletion of the docket records for the confusions and negative impacts on review & justice. [47] document, [48] extension for cert petition supreme court by Xiao-Ying Yu. [1000530601] [18-1889] Xiao-Ying Yu [Entered: 06/14/2019 01:51 PM]
07/23/2019	<input checked="" type="checkbox"/> <u>50</u> 433 pg, 113.12 MB	CERTIFICATE/SERVICE LIST by Xiao-Ying Yu. [18-1889] Xiao-Ying Yu [Entered: 07/23/2019 11:31 PM]
07/29/2019	<input checked="" type="checkbox"/> <u>51</u> 1 pg, 8.52 KB	COURT ORDER filed [1000556009] denying Motion to publish opinion/orders; denying Motion to reconsider court order [45]. Copies to all parties. [18-1889] CB [Entered: 07/29/2019 03:52 PM]
08/01/2019	<input checked="" type="checkbox"/> <u>52</u> 11 pg, 757.34 KB	DOCUMENT re: copy of correspondence to US Supreme Court by Xiao-Ying Yu. [1000558728] [18-1889] CB [Entered: 08/01/2019 02:06 PM]
08/12/2019	<input checked="" type="checkbox"/> <u>53</u> 7 pg, 1.2 MB	MOTION by Xiao-Ying Yu Plaintiff respectfully submits her application to suspend the court's order denying her request to reconsider recalling the mandate of the judgment during the U.S. Supreme Court's review of her application for stay and injunctive relief. to suspend. Date and method of service: 08/12/2019 ecf. [1000565041] [18-1889] Xiao-Ying Yu [Entered: 08/12/2019 11:59 AM]
08/13/2019	<input checked="" type="checkbox"/> <u>54</u> 1 pg, 8.22 KB	ORDER filed [1000565635] denying Motion to suspend court's order [53]. Copies to all parties. [18-1889] CB [Entered: 08/13/2019 08:09 AM]
08/26/2019	<input checked="" type="checkbox"/> <u>55</u> 16 pg, 3.96 MB	MOTION by Xiao-Ying Yu Plaintiff respectfully submits motion for correction of errors in the docket records and for stay pending review by the Supreme Court. to reconsider order [54], court order [51], order [44], mandate [40]. Date and method of service: 08/26/2019 ecf. [1000574602] [18-1889] Xiao-Ying Yu [Entered: 08/26/2019 11:51 PM]

Respondents' counsel Mr. Lewis' waiver to response the Petition for writ of Certiorari (dated 8/30/2019 and mailed to Petitioner on 8/31/2019).

# WAIVER

## SUPREME COURT OF THE UNITED STATES

19-262

Supreme Court Case No. 19-262  
Xiao-Ying Yu v. Robert R. Neall, et al.  
(Petitioner) v. (Respondent)

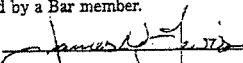
I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

Please enter my appearance as Counsel of Record for all respondents.  
 There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):  
\_\_\_\_\_  
\_\_\_\_\_

I am a member of the Bar of the Supreme Court of the United States.

I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature 

Date: 8/30/2019

(Type or print) Name James N. Lewis

Mr.  Ms.  Mrs.  Miss

Firm Maryland Office of the Attorney General

Address 300 West Preston Street, Suite 302

City & State Baltimore, Maryland Zip 21201

Phone 410.767.5162 Email James.Lewis1@maryland.gov

A COPY OF THIS FORM MUST BE SENT TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

CC: Ms. Xiao-Ying Yu

Exhibit No. 4

(from Petition-related Appendix #23a-d, filed on 8/23/2019).

Petitioner received EEOC's recording file which was requested via FOIA and affirmed by FOIA on 7/6/2018. The EEOC's investigator hand-written notice indicated that Ms. Barra's interference with EEOC's investigation (4/19/2017 fact-finding conference) of Petitioner's Title VII, ADA and ADEA charges. (filed on 7/24/2018 along with her motion for clarification and relief as well as motion for leave to file amendment in response to the District Court's 6/26/2018 decision. However these documents were returned because her case was closed on the same day of the District Court's decision based on the genuine issues without a trial and pre-direction. Petitioner re-submitted on 7/26/2018 along with her timely notice of appeal which was returned again because the District Court required her attorney to file it. Finally Petitioner re-submitted her notice of appeal with these new evidence on 8/7/2019 (ECF#53, CA4-doc#15, 10/18/2018).

Exhibit No. 4a.

*People who attended EEOC's fact-finding conference:*

EEOC Recording file:

FACT-FINDING CONFERENCE WEDNESDAY,  
APRIL 19, 2017

10:00 a.m.

(Xiao-Ying Yu v. Maryland Department of Health  
and Mental Hygiene)

NAME

Delinda johnson

*Sara Barra*

*Nicholas Johansson*

FACT-FINDING CONFERENCE

WEDNESDAY, APRIL 19, 2017

10:00 a.m.

(Xiao-Ying Yu v. Maryland Department of Health and Mental Hygiene)

NAME

Delinda johnson

*Sara Barra*

*Nicholas Johansson*

JOB TITLE

Equal Access Compliance Mgr., DH

CHIEF, EPIDEMIOLOGY & SPECIAL PRO  
(former title)

CHIEF PLANNER, PREPAREDNESS;  
(current title) RESPONSE

Assistant Attorney General, DHMT



OFFICE OF THE ATTORNEY GENERAL  
STATE OF MARYLAND  
DEPARTMENT OF HEALTH & MENTAL HYGIENE

State of Maryland

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njohansson@oag.state.md.us

Exhibit No. 4b.

EEOC investigator Ms. Christine Boyd's handwritten notice:

44-126 App.126 Case 1:14-cv-00256-UNB Document 3 Filed 08/07/18 Page 36 of 53 4/14/17	
Timeline	
	Dr. YAO Ying-Yao v. D.H.M.H. 531-2014-02468-C Basis: Race (Asian), N.O. (Chinese), Age (61) and Retaliation
11/3/09	- CP hired as Epidemiologist
12/19/12	- Sara Barr becomes CP's supervisor
	FMLA Requested & Approved 6/23/14 - 9/2/14
7/23/14 8/15/14	CP requested reasonable accommodation: Change supervisor
9/3/14	CP supervisor was reported as "valueless"
10/8/14	2nd workability exam by Dr. Toney showed results of Anxiety, depression, Post Traumatic Stress disorder
10/10/14	CP ask to resign or retire
10/14/14	Final rejection of CP's accommodation request
11/3/14	CP terminated
2/19/15	Rec'd Respondent's position statement
3/6/15	P.S. mailed to CP
4/20/15	CP sent for rebuttal

FOIA 3/27/18 J. Jeffreys revised?	APP 167 Case 1:17-cv-03250-JKB Document 527-1 Filed 04/17/18 Page 32 of 53 Sub Ex 5(j)(7)
<i>SICK LEAVE annual leave</i>	<i>It's approve exhausted</i>
	<i>a lot of leave taken before FMLA</i>
<i>IMPACT</i>	<i>Leave was erratic don't get her schedule Sara took care of her work irratic schedule</i>
	<i>Came in she could "part of a day" - she left</i>
<i>initial work schedule</i>	<i>prior to FMLA - Sara recruitment workability</i>
(1) Person for her help = Kathy (2)	<i>First time no conversation with supervisor or to did</i>
	<i>2nd work ability) → → → mention work gone - Confuse SARA</i>
EPI	<i>For short upheld under regular - not updated (as was demanded)</i>
	<i>Final = # Due to enlarge from page, it is not with "She was delayed". Reclassification II It is very hard to see 200</i>

Exhibit 4c.

*Ms. Sara Barra intentionally contacted HR motivating HR to terminate Petitioner which was indicated by Ms. Barra's testimony.*

*After received Dr. Toney's letter on 10/8/2014, Ms. Barra talked with DHMH HR Ms. Toria Livingston and provided biased and false information, this was evidenced by Ms. Barra's testimony at 5/14/2015 OAH hearing. Below is the transcript of 5/14/2015 hearing proceeding from CDA OAH provided to Petitioner in May and June, 2015. Mr. Doring is the lawyer in DHMH HR, OAH Judge is Judith Jacobson (See Ms. Barra's testimony in OAH).*

Transcript p.12, L23-26;

12 Mr. Doring: Are you under impression if Ms. Yu can play essential function?

13 Ms. Barra: No.

14 Judge: I am going to accept this document.

15 Mr. Doring: Did they ask you what can be done for this accommodation request?

16 Ms. Barra: No

17 Judge: I got another Dr. Toney's letter evaluation on 9/18/2014, DHMH exhibit #11.

18 Mr. Doring: Can you tell about this?

19 Ms. Barra: Continue evaluation. Ms. Yu can't back work and suggested independent evaluation

20 Mr. Doring: Evidence...

21 Judge: I am going to accept this.

22 Mr. Doring: (Distributed exhibit #12)

23 Judge: This is Dr. Toney's 10/8/2014 report.

24 Mr. Doring: Could you summary?

25 Ms. Barra: Ms. Yu can't perform work under current supervisor. Recommend not return to work.

26 Mr. Doring: What is your decision?

p.13, L1-28

1 Ms. Barra: Asked my supervisor, HR and EEO. I got the instruction. Ms. Yu's request is not reasonable. To grant

2 new supervisor is not reasonable. Rejected her accommodation request.

3 Judge: Any objection?

4 Ms. Yu: ..

5 Mr. Doring: You stated the conversation, what conversation? Are you willing to accommodate?

6 Ms. Barra: I will try all my best to accommodate her behavior, her writing part issue. But she does not want to

7 talk to me or work to me. She wanted to talk with my supervisor. She just do not want to talk and work to me.

8 Mr. Doring: Do you know her health condition?

9 Ms. Barra: No, I do not know. She sent the doctor's notice, then, refused. She sent the doctor's notice to HR.

10 That is the protocol HR instructed. She could send to HR but need to report me that.

11 Ms. Barra: I took part load. It is difficult taking her working load. It is difficult for the Center.

12 Judge: Dr. Toney's notice on 10/8/2014 as exhibit #12. It is time 12:15. Can I ask how long will be?

13 Mr. Doring: It will take 30 min.

14 Judge: 0.5 hr later, then take break lunch. You have time to ask later. I got DHMH exhibit #13, DHMH HR Ms.

15 Toria Livingston 10/10/2014 notice to Ms. Yu.

16 Mr. Doring: Who is Ms. Livingston? What role? How did you involve with her?

17 Ms. Barra: She is HR with PHPA for the personnel decision. She advice employee and supervisor in PHPA as to

18 what allowable under HR regulations.

19 Mr. Doring: Do you have any consultation with her?

20 Ms. Barra: I have not conversation with Ms. Livingston.

21 Mr. Doring: What content of the conversation with HR Ms. Livingston between 10/8 and 10/10/2014?

22 Ms. Barra: I told her Ms. Yu's PEP unsatisfactory, disciplinary action, I gave her everything so far I had.

23 Accommodation request and what options to her.

24 Mr. Doring: Did she (Ms. Livingston) was aware of EEO unable to accommodation, that Ms. Yu can't be given,

25 EEO rejected accommodation?

26 Ms. Barra: Yes

27 Mr. Doring: Summary?

28 Ms. Barra: Ms. Livingston's letter advice her that she may resign, retire and disability, if not, she will be

29 terminated.

p. 20, L5-10

5 Ms. Yu: When did you know from HR or EEO I am in the interactive process of accommodation process?

6 Ms. Barra: I do not recall which day.

7 Ms. Yu: Did EEO Ms. (Delinda) Johnson discuss with you if I am allowed to work for other supervisor?

8 Ms. Barra: I did not.

9 Ms. Yu: When did you know Dr. Toney's 10/8/2014 recommendation to change supervisor?

10 Ms. Barra: Sometime of later of October. I can't remember and recall exact day.

11 **CDA#3, Tract#8, time. 4:13-0:48**

12 Ms. Yu: So, when did you change office structure after she talked to you in the October?

13 Ms. Barra: I do not understand your question.

14 Ms. Yu: You said you only learn from EEO Ms. Delinda Johnson about Dr. Toney's recommendation

15 CDA#3, Track#8, Time. 4:51\_the end of track#8:

16 (*Information was missing and there was no recording.*)

17 CDA#3, Tack#9

18 Mr. Doring: Objection

19 Judge: There was no question yet.

20 Ms. Yu: I am asking your question: Mr. Doring gave you Exhibit #1, about office structure change in Oct 2014.

21 Judge: Ask question

22 Ms. Yu: I am asking question, (about) this office structure change, does office structure change after you learn

23 from EEO about Dr. Toney's recommendation?

24 Ms. Bara: I did not learn about Dr. Toney's recommendation from EEO.

25 Ms. Barra: Office change is not my decision but is office director's decision. I can not change the office, that

26 belong to director.

p. 21, L1-28

1 Ms. Yu: My first question, when did you learn Dr. Toney's recommendation? My second question...

2 Judge: (interrupted) Stop! I have a question, is the office structure change?

- 3 Ms. Barra: October 2014. If there is a change, it is minor. Because change remain same, I am her supervisor
- 4 since beginning 2013.
- 5 Judge: Move on, what is your next question?
- 6 Ms. Yu: Thank you, your honor. Because DHMH EEO Ms. Johnson wrote to me after discuss with managers
- 7 about consideration of ADA including you and indicated that you participated in the objection of ADA. Did you
- 8 even express your desire?
- 9 Ms. Barra: No, I never expressed.
- 10 CDA#3, Track #9, time. 3:30-1:32
- 11 Ms. Yu: Did you ever thought after you learn Dr. Toney's recommendation how to make this office
- 12 effectively work, more happiness and peaceful working environment? What is your solution?
- 13 Ms. Barra: Yes...
- 14 Judge: (Interrupted Ms. Barra's answering Ms. Yu's question) Original question is that did you try to change
- 15 the environment after Dr. Toney's recommendation? The answer was "yes", what is your next question?
- 16 Ms. Barra: I am sorry, I misunderstand.

17 Judge: No ever, after Dr. Toney's recommendation. What is your next question?

18 (*long time gap in the recording of proceedings, some information was missing.*)

19 Tract #9, 4:30\_-0.32:

20 Ms. Yu: Did you participate in the termination letter?

21 Ms. Barra: No, I did not.

22 Ms. Yu: did you...?

23 CDA#3, Track#9, time. 4:41 to the end of track#9.

24 (*Some information was missing and there was no recording.*)

25 CDA#3, Track#10

26 Ms. Yu: About the rejection of accommodation. Why you think it is not working?

27 Ms. Barra: Certainly! The office only have epidemiologist III and II. Epidemiologist II must work under

28 Epidemiologist III. Epidemiologist III qualify lead epidemiologist II.

p.22, L1-28;

- 1 Ms. Yu: You just stated that you never expressed your desire and participate in the decision, but why you
- 2 think only I work under your leadership can work more effectively for the office?

- 3 Mr. Doring: Objection!
- 4 Judge: Question did answer, next question!
- 5 Ms. Yu: Could you let me know new office structure was based on what principals?
- 6 Judge: Answer was "there really not much change in the office structure."
- 7 Ms. Yu: The reason I asked about is that: the structure changes was based on the program: There are four
- 8 programs under office director, each program led by the program manager...
- 9 Judge: (Interrupted), I am ruling question.
- 10 Ms. Yu: My question is, next, coming soon,...
- 11 Judge: (Interrupted again) Do you have another question?
- 12 Ms. Yu: Do you know Mr. Jeff working local public health, he work under Ms. Erin Pension? He is the
- 13 evaluator, similar to epidemiologist, cross and interact to function for office program.
- 14 Ms. Barra: Yes, Mr. Jeff Norris work under Erin Pennson.
- 15 Judge: The structure of the office employee content is not relevant to this case.
- 16 Ms. Yu: But, it is very critical, if you allow me, your honor,...

17 Judge: (Interrupted again) You can do it in your statement. But now the witness answered your question,

18 move on next question.

19 Ms. Yu: Am I epidemiologist for heart disease, stroke diabetes and obesity before you came to this office?

20 Ms. Barra: Yes

21 Ms. Yu: So, when did my title as "epidemiologist" title was changed to "State Public health action

22 epidemiologist"?

23 Judge: I have not seen any relevant.

24 Ms. Yu: It is important relevant to my accommodation, my returning work under program manager

25 leadership...

26 Judge: (Interrupted again) I am asking you to move on.

27 Ms. Yu: Ok, I hope I can remember later about this issue. Do you think your working way: divide into small project, e-mail reporting...

p.23, L1-28

1 Judge: (Interrupted again) I do not understand question. Try to make short question.

2 CDA#3, Track #11:

3 Judge: I don't see question, try again with short question.

- 4 Ms. Yu: Ok. Since Department accommodate what you try to do, but I rejected. Why do you think your
- 5 accommodation way works?
- 6 Judge: (Did not allow Ms. Barra to answer Ms. Yu's question) Ok, the witness gave the opinion, decision of
- 7 Department ADA already made, it is not important her opinion, I do not want to know.
- 8 Ms. Yu: If you think it is not necessary, because I asked is related to the accommodation, why two medical
- 9 doctor recommended DHMH EEO to change supervisor? Why...
- 10 Judge: She answered question.
- 11 Ms. Yu: She answered, I asked next question, she had not gotten a chance to answer yet...
- 12 Judge: My ruling is that she has already answered question. Is there any other question?
- 13 Ms. Yu: Because I just asked, Ms. Barra has not answered, Ms. Jacobson interrupted.
- 14 Ms. Yu: The termination said I cannot do essential function as your last disciplinary action: I can not do a job,
- 15 "unsatisfactory" PEP.
- 16 Mr. Doring: Objection!
- 17 Judge: I even did not understand the

question.

18 Mr. Doring: This "unsatisfactory" PEP was different appeal, other issue. The reason of "unsatisfactory" PEP was

19 not listed the reason.

20 Judge: Actually, you can reject this PEP because agency did not list it as the reason I do not need the question

21 related to this.

22 Judge: I am ruling. I am hearing this statement of agency that was not the part of consideration of termination.

23 I do not need to hear it.

24 Ms. Yu: Mr. Doring just asked Ms. Barra about "unsatisfactory PEP" and it was related to the termination. That

25 was her answer. I am very sorry to hear that (Mr. Doring's objection) his statement in same issue and same

1(OAH hearing) meeting.

2Judge: It has been said, I am ruling the meeting.

Ms. Yu: Ok.

CDA#3, Track #11, time. 4:22\_-0.39:

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Exhibit No. 4d.

DHMH HR Ms. Toria Livingston sent Petitioner letter (10/10/2014) informing her the termination plan prior to DHMH Office of Equal Opportunity's

response to Dr. Toney's recommended accommodation and failed to provide Petitioner a mitigation meeting (see below):

October 10, 2014

Xiao-Ying Yu

557 Kirkcaldy Way

Abingdon, MD 21009

Dear Ms. Yu,

I am Writing in reference to your employment status with the Department of Health and Mental Hygiene, Prevention and Health Promotion Administration. We recently received a letter from the State Medical Director, Dr. Robert Toney, advising us that if a change in your work environment could not be granted, than it is not recommended that you return to work.

This is to advise you that you may resign your position by forwarding a letter to that effect to my attention by October 24, 2014 or, if you are eligible, you may apply for a disability or service retirement, in lieu of termination. If you choose not to resign or retire, regrettably based on the Medical Director's finding, we have no alternative but to terminate your employment. Enclosed, please find an application for the continuation of health benefits (COBRA), an Application for Service and Disability Retirement, and a copy of Dr. Toney's letter. Should you have any

questions or if we can be of assistance in any way,  
please don't hesitate to contact me on (410) 767-5424.

Sincerely,

/s/ Toria Livingston

*Toria Livingston*

Personnel Officer II

Office of Human Resources

Attachments

File

Sara Barra

.....

**Exhibit No.4e.**

(see Petition-related Appendix#27b, filed on  
8/23/2019)

EEOC's right-to-sue letter filed in the District  
Court of Maryland on March 22, 2018.

U.S EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Baltimore Field Office

City Crescent Building  
10 South Howard St 3<sup>rd</sup> Floor  
Baltimore, MD 21201

Dr. Xiao-Ying Yu  
557 Kirkcaldy Way  
Abingdon, Maryland 21009

Re: EEOC Charge No.:531-2014-02468C  
Yu v. Maryland Department of Health and  
Mental Hygiene

Dear Dr. Yu:

We have reviewed the information provide by both you and your previous employer, hereafter referred to as "Respondent." In additional, I received your rebuttal and the information secured during the Fact-Finding Conference held on April 19, 2011 at 10:00 a.m.

You alleged that you were sub to harassment due

to your race (Asian), national origin (China), age (61), disability and discharged in retaliation for engaging in protected activity in violation of Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act of 1967, as amended, and the Americans with Disabilities Act Amendment Act (ADAAA of 2008).

Respondent denied all allegations of discrimination and contends that Sara Bara became your new supervisor on December 19, 2012. During the Fact-Finding Conference held on April 19, 2017, Ms. Bara indicated that she did not discriminate against you due to your race, age, national origin, disability or age. At the times you were the only individual in your position as Epidemiologist II in the unit Ms. Bara stated that due to the addition of more work and more people were hired. The MS-22 Job Description was refined and expanded for the other new staff members. Ms. Bara indicated that there were several times in which you met with Dr. Schell regarding research abstract and other matters and Ms. Bara advised you to go thru her before discussing is with internal and external partners. The disciplinary actions you received were in reference to you still going to these internal and external partners to discuss matters before meeting with Ms. Bara or to argue your point. Although you complained of discrimination, I was unable to find any evidence to support your claim and unable to find a causal connection of retaliation that led to your termination.

As you know, the Fact-Finding Conference was held on April 19, 2017 and attended by Delinda Johnson, Equal Access Compliance Manager, DHMH, Sara Bara, formerly

Chief Epidemiology Special Projects and Nicholas Johansson, Assistant Attorney Gen DHM.H, and on conference call Peter Y. Qui, Esq. of the Law Office of Peter Y. Qui listened in on your behalf. As you aware, you came to the fact-finding conference and handed me a doctor's note from Dr. Sharen Bisson, MD, indicating that you were not medically able to attend a conference without the support and active participation of your attorney. After handing me the note, I still held the fact-finding conference because the other attendees had arrived.

The Fact-Finding Conference was an efficient way of getting all the players together and discussing the issues that brought the complaint about in the first place. I have made the decision to recommend a no-cause finding.

On September 5, 2017, I received an email from James M. Ray II of the Law Firm of Ledyard Ray, LLP indicating that he no longer represented you. During your visit to our office on August 29, 2017, you also indicated that Mrs. Ray no longer represented you.

Therefore. You are being issued a Dismissal and Notice of Rights which affords you the opportunity to take this matter into Federal Court. You have the right to file a lawsuit against the employer within 90 days from the date you receive the Dismissal and Notice of Rights. If you fail to file a lawsuit within the appropriate time frame, you will lose the right to pursue this matter in court.

Should you wish to obtain a copy of the administrative file for this charge, please write to the following address to make such a request. You must do so within the above-referenced 90-day period, which can be extended if you do

file a lawsuit in court concerning this matter. Please be advised that there may be a fee if you make such a request for file disclosure. Furthermore, please note that failure to receive requested documents in a timely manner does not extend the time-period for filing a lawsuit.

File Disclosure  
EE0C-Phibvielphia District Office  
801 Market Street, Suite 1300  
Philadelphia, Pennsylvania 19107

Should you have any questions, I can be reached at (410) 209-2782 or via email at [christie.boyd@eeoc.gov](mailto:christie.boyd@eeoc.gov).

Sincerely,

/s/Christie D. Boyd  
Christie D. Boyd  
Investigator

EEOC Form 161 (11/16)  
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION  
**DISMISSAL AND NOTICE OF RIGHTS**

To: Xiao-Ying Yu  
557 Kirkcaldy Way  
Abingdon, MD 21009  
Baltimore, MD 21201

From: Baltimore Field Office  
10 South Howard St  
3rd Floor

*On behalf of person(s) aggrieved whose identity is  
CONFIDENTIAL (29 CFR § 1601. 7(a))*

EEOC Charge No. 531-2014-02468

EEOC Representative:

Investigator: Christie D. Boyd, Investigator  
Telephone No.: (410) 209-2762

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE  
FOR THE FOLLOWING REASON:

[ ]The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

[ ]Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

[ ]The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

[ ]Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

[X] The EEOC issues the following determination:

Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violation of the statutes. This does not certify that the respondent is in compliance with that statutes. No finding is made to any

other issues that might be construed as having been raised by this charge.

[ ] Other (briefly state)

**- NOTICE OF SUIT RIGHTS -**

*(See the additional information attached to this form.)*

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that back pay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission: Rosemarie Rhodes

(stamp)

*Rosemarie Rhodes*

Director

(Date Mailed): 10/16/2017

Enclosure(s)

Cc: Nicholas E. Johansson

Assistant Attorney General

Office of the Attorney General, State of Maryland

Department of Health and Mental Hygiene

Suite 302

300 West Preston Street

Baltimore, Maryland 21201

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**Exhibit No. 5**

Dr. Bruise Sprain's diagnosis and treatment based on the X-Ray which indicated the fracture of Petition's right foot fourth and fifth metatarsal bone:

Please make an appointment with orthopedist 3 visit(s) with for Disp fx of fourth and fifth metatarsal bone, right foot.